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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 986

LOUIS FRIED,

Petitioner,

vs.

BROOKLYN BAR ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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0249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

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RESPONDENT'S BRIEF

Statement

Petitioner, Louis Fried, petitions for a Writ of Certiorari, directed to the Court of Appeals of the State of New York, to review a final order of the Court of Appeals, entered November 24, 1965, affirming an order of the New York Supreme Court, Appellate Division, Second Department, entered May 10, 1965, without opinion, denying petitioner's application for a writ of error coram nobis to declare null and void an order made by the said Appellate Division on January 10, 1936, during petitioner's imprisonment, disbarring him by operation of law, on the ground that it was in violation of the due process clauses of the State and United States constitutions.

History

Petitioner Louis Fried, was admitted to the Bar of the State of New York by the Appellate Division of the Supreme Court, Second Department in December, 1927.

In 1935 he was convicted in the United States District Court for the Eastern District of New York of the crime of violating section 414, title 8 of the United States Code, a felony.

Charges were served upon the petitioner by the Brooklyn Bar Association and upon his default and failure to answer said charges an order was entered for his disbarment in January, 1936 (246 App. Div. 817, 284 N.Y.S. 836).

A presidential pardon was granted to Mr. Fried in October, 1945.

Subsequently, Mr. Fried applied to the Appellate Division for reinstatement, on January 9th, 1950, June 18th, 1951 (withdrawn) and March 24th, 1952. In 1959 the Appellate Division referred another application to Hon. George A. Arkwright, Official Referee. A full hearing was conducted and in his report the Official Referee recommended that the application be denied, stating:

> "If one were to accept, face value, the petitioner's version of the alleged perjury committed in the trial which petitioner avers resulted in his conviction, or to accept the presidential pardon, as expunging any need for this court's consideration of any of his acts which resulted in his disbarment, we are still confronted with the following: a) In order to secure a reduction of his own sentence, petitioner falsely implicated Weinberger in an alleged crime of which Weinberger was innocent. b) He brazenly deceived and tricked Judge Galston into reducing his sentence by false statements. c) After giving the special U. S. assistant attorney a statement, he testified otherwise at the hearing of the Association of the Bar.
>
> I am unimpressed by the petitioner's claim of duress and mental stress when he involved Weinberger. There is no supporting testimony of this contention. Petitioner tried to save himself but callously involved Weinberger, irrespective of what might happen to the latter, his reputation, his license to practice law,

or his family." (Petitioner referred to above is the petitioner herein.)

On the basis of Referee Arkwright's report the Court denied the application for reinstatement (14 App. Div. 2d 920).

Mr. Fried's subsequent applications to the Appellate Division were denied on March 26th, 1962, November 26th, 1963, May 26th, 1964 and on May 10th, 1965, the latter being the basis of the current appeal.

POINT I

No construction of either the State or United States constitutions is involved in this appeal.

Mr. Fried claims that there is a violation of the due process clauses of the State and United States constitutions by the order of disbarment of the Appellate Division.

Pursuant to the Judiciary Law, Mr. Fried was served with a copy of the charges which called for his disbarment. He defaulted or otherwise failed to answer the charges. Because of his default the order to disbar him was entered.

246 App. Div. 817, Jan. 1936, 284 N.Y.S. 836.

Thereafter, Mr. Fried applied for reinstatement and in 1959 the matter was referred by the Appellate Division to Hon. George A. Arkwright, Official Referee.

Mr. Fried and witnesses testified at a full hearing. He was permitted wide latitude in the presentation of his case.

Based on the report of the Official Referee, the Appellate Division confirmed the report which recommended that Mr. Fried's application for reinstatement be denied.

14 App. Div. (2d) 920, Nov. 1961.

Since Mr. Fried did receive or had knowledge of the charges made against him and since he did have a full hearing on the matter there was no violation of the due process clauses of either the State or United States constitutions.

POINT II

The Judiciary Law of the State of New York authorizes the Appellate Division of the New York State Supreme Court to disbar an attorney on grounds other than conviction of a felony under New York law.

Paragraph "2" of Section 90 of the Judiciary Law of the State of New York authorizes the Appellate Division of the New York Supreme Court to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor or any conduct prejudicial to the administration of justice.

Although the charges against Mr. Fried were based primarily on his conviction in the United States District Court for the Eastern District they were broad enough to cover any phase pursuant to the Judiciary Law. Mr. Fried did nothing to deny the charges and because of his default the *prima facie* case was presented for his disbarment.

The power of the Appellate Division to discipline an attorney is not limited to cases where his act was technically criminal and he may be punished for unprofessional conduct showing a lack of due appreciation of the rules of ethics by which his conduct should be regulated.

Matter of Chadsey, 141 App. Div. 458, 126 N.Y.S. 456, aff'd without opinion 201 N. Y. 572.

POINT III

Petitioner had his day in court when he submitted himself to the jurisdiction of the Appellate Division of the Supreme Court in proceedings subsequent to the disbarment on his own application for reinstatement to the office of attorney.

Paragraph "4" of Section 90 of the Judiciary Law reads in part, as follows:

> Any person being an attorney and counsellor-at-law who shall be convicted of a felony, shall, upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

Paragraph "5" of Section 90 of the Judiciary Law follows:

> Upon a reversal of the conviction for felony of an attorney and counsellor-at-law or pardon by the president of the United States or governor of this State, the Appellate Division shall have power to vacate or modify such order or debarment.

After Mr. Fried was pardoned by the president of the United States he applied to the Appellate Division for reinstatement.

The Appellate Division referred the matter to Hon. George A. Arkwright, Official Referee.

Mr. Fried submitted himself to the jurisdiction of the Appellate Division when he applied for relief and then attended a full hearing of his application. Mr. Fried had his day in Court.

CONCLUSION

The writ should be denied.

Respectfully submitted,

BENJAMIN R. RAPHAEL,
Attorney for Respondent.

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REPLY TO RESPONDENT'S OPPOSITION BRIEF

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